PERMITTEE: BENDERSON DEVELOPMENT COMPANY, INC.

PERMIT NUMBER: 95-987-1(1)

EFFECTIVE DATE: _____

NOTE: The term you and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below. (and continue on page 5)

PROJECT DESCRIPTION: BENDERSON DEVELOPMENT COMPANY, INCORPORATED, 570 DELAWARE AVENUE, BUFFALO, NEW YORK 14202-1284, IS HEREBY AUTHORIZED BY THE SECRETARY OF THE ARMY TO: FILL 6.6 ACRES OF WETLAND, AND FILL AND RELOCATE APPROXIMATELY 4,400 LINEAR FEET OF A TRIBUTARY TO MUD CREEK IN ACCORDANCE WITH THE GENERAL AND SPECIAL CONDITIONS, AND THE PLANS AND DRAWINGS AND ANY ADDITIONAL SPECIAL CONDITIONS ATTACHED HERETO WHICH ARE INCORPORATED IN AND MADE A PART OF THIS PERMIT.

PROJECT LOCATION: THE PROJECT IS LOCATED IN FEDERAL WETLANDS AND AN UNNAMED TRIBUTARY TO MUD CREEK, IN THE TOWN OF NEW HARTFORD, ONEIDA COUNTY, NEW YORK.

PERMIT CONDITIONS

GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends on _____. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you must make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity, or should you desire to abandon it without a good faith transfer, you may obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

FURTHER INFORMATION:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any

liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as this specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

_____

(PERMITTEE)

_____

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

_____

(DISTRICT COMMANDER)

_____

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

_____

(TRANSFEREE)

_____

(DATE)

SPECIAL CONDITIONS:

1. Upon request of an authorized representative of the Buffalo District, U.S. Army Corps of Engineers (USACE), you shall allow access to the project site and mitigation parcels to determine compliance with the terms and conditions of this permit.

2. You are responsible for ensuring that the contractor and/or workers executing the activity(s) authorized by this permit have knowledge of the terms and conditions of the authorization and that a copy of the permit document is at the project site throughout the period the work is underway. In this regard you are required to conduct briefings at the time weekly safety meetings are scheduled to insure workers are familiar and understand permit terms and conditions.

3. Prior to initiation of work authorized by this permit, a pre-construction meeting shall be held. All those individuals involved in the design, implementation, and on-site construction of the project must participate. The pre-construction meeting will be scheduled once Special Condition Nos. 4-6, 8-10, 14, and 17 are satisfied. You shall contact Ms. Kozlowski at 716-879-4433 to schedule the pre-construction meeting.

4. A proposed construction schedule, along with the names and telephone numbers (office, cellular, and pagers) of individuals responsible for the execution of the Mitigation and Monitoring Plan (M&MP), shall be submitted to this office along with the M&MP. The schedule should include dates for installation of sediment and erosion controls, earth moving (cut and fill) time schedules, seeding and planting schedule, and project inspection schedules. Ms. Kozlowski, USACE Regulatory Branch, shall be notified of any modifications to the construction schedule within 24 hours. Notification shall be made by facsimile (716-879-4310), or email (Diane.C.Kozlowski@usace.army.mil). This schedule shall be updated throughout the construction period as necessary.

5. You shall appoint a scientifically qualified individual to oversee the construction of the wetland mitigation areas and tributary relocation. This person shall ensure that sediment and erosion controls are properly maintained, wetlands to remain undisturbed are protected from construction activities, and that implementation of the M&MP proceeds as approved. The inspector hired for this task must be independent from Benderson Development Company, its affiliates, construction contractors, and environmental inspection staff. You shall provide this office with a copy of the contract for the independent inspectors' services. You must provide a plan which demonstrates that the inspectors will function independently from Benderson's inspection staff and address all aspects of the inspectors' authority, duties, and reporting procedures. The inspector must have equipment and appropriate points of contact to maintain an efficient and effective line of communication with Benderson's inspection staff and the designated Buffalo District Regulatory staff. The plan must be approved by the District

Commander prior to commencing any work in waters of the United States. The District Commander can subsequently modify or update the plan if such action is deemed necessary to comply with the terms and conditions of this permit. If the permittee terminates its contract with the independent inspector, work authorized by this permit shall cease until a replacement for the independent inspector is approved by the District Commander, and hired and present on the construction site.

6. Prior to any work proceeding within regulated wetlands or waters, you shall submit for review and approval a detailed Mitigation and Monitoring Plan (M&MP) to include, but not limited to, the following:

a. General description of components of the mitigation plan, including size of wetland creation, and types of plant communities/habitats to be created.

b. Detailed planting plan, including species to be used for the buffer limits (reference Special Condition Nos. 15 and 16), method of planting, plan for eradicating noxious weeds and exotic species.

c. Detailed construction plans, including cross-sections, and construction notes describing such things as microtopography, rough grading, wetland topsoil handling/storage, etc.

d. Construction techniques including site preparation and construction schedule.

e. Schedule for as-built drawings (wetland footprint, surface elevations, location of permanent monitoring posts, water depths at sampling points, depth of topsoil at sampling points, fixed photographic reference stations).

f. Monitoring reports (mitigation goals and objectives, methods of sampling, sampling schedules, vegetation cover maps, photographs, surface and groundwater elevations, wildlife observations).

Schedules for development of the M&MP will be finalized during the review and approval process.

7. Prior to land clearing you shall define using color coded stakes the limits of site development (toe of slope), the centerline of the relocated stream alignment, and the wetland mitigation areas. Downstream of the confluence of the tributaries, the centerline and top of bank shall be staked for the relocated stream alignment, through the riparian corridor. The staking plan shall be inspected and approved by Ms. Kozlowski prior to beginning work on the project site (cross-reference Special Condition No. 17). When this task is completed notify Ms. Kozlowski at 716-879-4433, or by email at Diane.C.Kozlowski@usace.army.mil

8. You shall take the following steps to develop the design for the stream relocation:

a. A watershed analysis shall be provided to ascertain the existing condition of the system and factors that may have contributed to the channel degradation. This includes evaluating historic and likely future vegetation, development, and other landuse conditions that affect the magnitude and duration of peak and base flows, and the yield and character of sediments introduced from bank and bed erosion, landslides, roads and construction sites, and surface runoff. You shall then identify project and reference reaches and undertake a

morphological characterization and classification of each. If the project and reference reaches are of a different scale, locate gage stations in similar hydro-physiographic provinces, use bankfull indicators and field measured data to classify these reaches, and develop basin hydrology and regional curves. Using the reference reach as a template and regime data from regional sources, develop a preliminary design for the cross-section and planform of the project reach. Then formulate the profile using the reference reach as a template. Finally, layout the proposed design and adjust to conform to existing landscape features. At the completion of this step you shall provide your data to us for review and approval before proceeding to step b. This information should be sent to the Ms. Kozlowski, USACE, Regulatory Branch, 1776 Niagara Street, Buffalo, NY 14207.

b. Calculate a stable channel slope and depth to insure that channel geometry is capable of transporting the inflowing sediment load through the project reach. Analytical approaches shall be used to calculate the design variables of width, slope, and depth from the independent variables of discharges, sediment inflow, and bed-material composition. Three equations are required for a unique solution of the three dependent variables. Flow resistance and either incipient motion or sediment transport equations are readily available to determine the range of potential stable slopes and corresponding channel geometry. This technique does not provide a unique solution, and a third equation is necessary to solve for at least one cross section variable.

c. Determine the design width of the channel. The design width is related to the idealized "bankfull width" which is the channel top width that occurs when the channel-forming (dominant) discharge occurs. In terms of frequency this discharge generally varies between the 1.5 and 2 percent chance exceedance annual peak flow, but may be outside this range. Current research suggests that the effective discharge is the best representation of the channel forming discharge. The effective discharge is the increment of discharge that transports the most sediment on an annual basis. This discharge may be determined by integrating a sediment transport-rating curve with the annual flow-duration curve. This calculation requires a knowledge of the flow-duration characteristics, bed material size distribution, and a sediment rating curve (either measured, calculated, or a combination thereof). This channel-forming discharge can sometimes be verified with field indicators of bankfull discharge. One of the following techniques shall be used to determine the design width as a function of

the channel-forming discharge in stable alluvial streams. In order of preference they are:

i. Develop a width vs. effective discharge relationship for the project stream. This can be accomplished by measuring average width in stable reaches where the effective discharge can be calculated. These channel reaches may be in the project reach itself or in reference reaches upstream and/or downstream from the project reach. If there is no significant lateral inflow and if a stable reach can be found within the project reach, then a single measurement may be sufficient. This also assumes that the banks are composed of similar material (and similarly vegetated) in the project and reference reaches and that there are no significant hydrologic, hydraulic, or sediment differences in the reaches. This technique is inappropriate for streams where the reference reaches are unstable.

ii. Find stable reaches of streams with similar hydrologic, hydraulic, and sediment characteristics in the region and develop a hydraulic geometry relationship for width vs. effective discharge. This technique is also inappropriate for streams where the reference reaches are unstable.

iii. If a reliable width vs. effective discharge relationship cannot be determined from field data, analytical methods discussed in step b. above, may be employed to obtain a range of feasible solutions. If the channel width is constrained due to right of way limits, select the required width and be prepared to provide bank protection. The composition of the bank is very important in the determination of a stable channel width. It has been shown that the percentage of cohesive material in the bank and the amount of vegetation on the bank significantly affect the stable channel width. General guidance is available in U.S. Army Engineer Manual EM-1110-2-1418 (1994).

d. Determine a stable channel meander wavelength, $?$. The most reliable hydraulic geometry relationship for meander wavelength is wavelength vs. width. As with the determination of channel width, preference is given to wavelength predictors from stable reaches of the existing stream either in the project reach or in reference reaches. Lacking data from the existing stream, general guidance is available from several literature sources.

e. Calculate the channel length, L, for one meander wavelength. Given the meander wavelength, $?$, the channel slope, S_0, and the valley slope, S_v, the channel length is computed from:

$$L = ? \left(\frac{S_0}{S_v} \right)$$

f. Layout a planform using the meander wavelength as a guide. This is often accomplished through trial and error, taking into account constraints on the channel location. Another, more analytical approach is to assume a sine-generated curve for the planform shape and using the algorithms described by Fischenich (Fischenich, C.J., 1996. "Design of Stable Low-Flow Channels in Sand Bed Streams". Proceedings, 1996 Federal Interagency Sedimentation Conference, Las Vegas, NV). This numeric integration can be accomplished using a computer program such as the one in the SAM hydraulic design package. The sine-generated curve produces a very uniform meander pattern. A combination of the string layout method and the analytical approach would produce a more natural looking planform. The design radius of curvature to width ratio should be within the normal range of 1.5 to 4.5. If the meander length is too great, or if the required meander belt width is unavailable, grade control may be required to reduce the channel slope.

g. Conduct a sediment impact assessment. The purpose of the sediment impact assessment is to assess the long-term stability of the restored channel in terms of aggradation and/or degradation. This can be accomplished using a sediment budget approach for relatively simple projects or by using a numerical model that incorporates solution of the sediment continuity equation for more complex projects. With a sediment budget analysis, average annual sediment yield of the existing channel. Large differences in calculated

sediment yield indicate channel instability. It may be necessary to design a channel that is less than ideal in terms of channel stability in order to achieve flood control or habitat benefits. Typically, a compound channel design provides the best combination of benefits.
The most reliable way to determine the long-term effects of changes in a complex mobile-bed channel system is to use a numerical model such as HEC-6. River systems are governed by complicated dependency relationships, where changing one significant geometric feature or boundary condition affects other geometric features and flow characteristics both temporally and spatially. Changes at any given location in a stream system are directly related to the inflow of sediment from upstream. This makes the application of the sediment continuity equation essential to any detailed analysis. The most significant of these relationships and the continuity of sediment mass are accounted for in the numerical model approach.

9. The design of the relocated channel shall demonstrate that variation in sediment transport capacity, as measured by either stream power or shear stress in excess of the critical shear for the d_{84} of the bed material, does not differ for the pre- and post- project condition except as noted in Special Condition No. 10.

10. As assessment of future hydrologic character and sediment yield for the unnamed tributary shall be conducted. The assessment shall address all anticipated future developments within the watershed, as well as the associated construction activities and any Best Management Practices (BMPs) that can reasonably be expected. The design geometry of the relocated channel should be consistent with future hydrology and sediment yield characteristics.

11. The design of the relocated channel shall ensure that the timing, frequency and duration of floodplain inundation does not differ between pre-project and post-project conditions.

12. Relocation of the stream shall not cause the confluence of the tributary to Mud Creek or the Liberty Gardens tributary to change position by more than 100 feet, and any repositioning of this confluence by less than 100 feet should not change the hydraulic gradient of the Liberty Gardens tributary.

13. The design of the relocated channel shall not create barriers to fish migration.

14. The character, frequency, and distribution of the key habitat parameters of substrate, depth, velocity, and cover shall not differ between the relocated and existing channel sections unless said difference can be shown to be environmentally advantageous. You shall provide written justification for any proposed changes to key habitat features, prior to proceeding with implementation of the stream design. This information shall be provided for review and approval to Ms. Kozlowski, USACE, Regulatory Branch, 1776 Niagara Street, Buffalo, NY 14207.

15. Upstream of the Liberty Gardens tributary, a riparian buffer of a minimum width of 50 feet on each side of the unnamed tributary should be maintained in cases where the floodplain/terrace slope is less than 5 percent. If the slope is between 5 and 20 percent, the

minimum width should be 75 feet. Composition of the buffer in this reach should include dense herbaceous vegetation, with a mixture of both cool and warm season grasses.

16. In the reaches downstream of the confluence of the tributaries, the relocated channel shall be shifted to the north such that a minimum 50 foot wide strip of existing hardwood trees will be preserved. An additional 25 foot buffer consisting of dense herbaceous vegetation shall be incorporated between the existing preserved hardwoods and the limits of development (toe of slope). Increases of 10 and 25 feet in width shall be implemented for slopes of 5 to 20 percent and greater than 20 percent, respectively.

17. The buffer limits required in Special Condition Nos. 15 and 16 shall be defined in the field using color coded stakes. The stakes shall distinguish between the limits of the forested buffer and the herbaceous buffer (cross-reference Special Condition No. 7). The staking plan shall be inspected and approved prior to beginning work on the project site.

18. Construction of the channel through the existing riparian habitat shall be non-invasive, and minimize removal of and disturbance to vegetation outside the channel boundary. All work associated with construction of the new channel through the riparian forest shall be conducted during late-summer or early-fall to avoid disturbance to breeding fauna.

19. All erosion and sediment control practices shall be placed prior to any grading or filling operations and installation of proposed structures or utilities. They shall remain in place until construction is completed and the area is stabilized. Erosion control devices shall be monitored daily and where necessary repaired to insure they are functioning properly. Inspection and

approval of erosion control systems by Ms. Kozlowski, USACE, Regulatory Branch is required before work can proceed. You shall contact Ms. Kozlowski at 716-879-4433 at least two days prior to completion of the installation of sediment and erosion controls.

20. Relocation of the stream shall be conducted in the dry. Once the stream and any adjacent wetland mitigation is constructed and banks are stabilized, you shall redirect flows through the new channel.

21. The loss of approximately 6.6 acres of wetland will be mitigated by creating 10.13 acres of wetland, including relocation of approximately 4,400 linear feet of the tributary to Mud Creek. The wetland creation shall be 4.74 acres of wetland within the Middle Settlement Road Wetland Creation Area, 4.39 acres of wetland within Wetland Creation Area D, and approximately 1.0 acre of wetland within the upstream most section of the Liberty Gardens Riparian Corridor. The Middle Settlement Road Wetland Creation Area will consist of palustrine emergent marsh, wet meadow, shallow persistent open water, upland hummock, and transitional scrub shrub. Wetland Creation Area D will be primarily wet meadow, with small pockets of shallow persistent open water and upland hummock.

22. The loss of approximately 6.6 acres of wetland will also be mitigated in through the preservation of approximately 45 acres of upland and wetland. The preservation area includes existing, undisturbed wetlands, created wetlands, and uplands outside of the limits of the development footprint. The exact limits of the preservation area, including acreages of

existing, undisturbed wetlands, created wetlands, and uplands shall be graphically and narratively depicted in the M&MP.

23. The mitigation and preservation areas are not to be adversely impacted in any way that compromises the functions and values of the protected resources. The mitigation and preservation areas shall remain protected in perpetuity.

24. A post-construction report shall be submitted to the Ms. Kozlowski, USACE, Regulatory Branch, 1776 Niagara Street, Buffalo, NY 14207 within 60 days after construction of the mitigation areas is completed. The post-construction report shall contain engineering drawings (plan view with 1 or 2 foot contour intervals, and cross sectional views) showing as-built features of the wetland and stream mitigation areas.

25. You shall submit annual monitoring reports on the status of the wetland and stream mitigation areas. The first report is due on November 1 after the first full growing season following completion of the mitigation work. Subsequent reports shall be submitted on or before November 1 for a minimum of 4 consecutive years. Monitoring reports shall be submitted to Ms. Kozlowski, USACE, Regulatory Branch, 1776 Niagara Street, Buffalo, NY 14207.

26. The mitigation goals outlined in the M&MP shall be met if the District Commander determines that the mitigation goals have not been met, steps shall be taken to achieve compliance to ensure proper establishment of the mitigation wetlands and stream relocation. Required measures may include, but are not limited to, regrading of the areas, seeding or planting,

construction or removal of berms, and installation of culverts, pumps, or other water controls. Additional mitigation will be required by the District Commander to ensure that this project does not contravene the public interest.

27. The project shall incorporate such stormwater management measures as necessary to ensure that peak discharges from the two-year precipitation event do not increase the discharge in either the unnamed tributary or Mud Creek by more than 5 percent over pre-project conditions.

28. The project shall incorporate such stormwater management and infiltration measures as necessary to ensure that baseflow in the tributary to Mud Creek is not diminished more than 5 percent, and that the incidence of no-flow days does not increase over pre-project conditions.

29. There shall be no construction or subsequent placement of buildings, utility lines, drainage work, fences, signs, billboards or other advertising material, within the limits of the designated mitigation and preservation areas.

30. There shall be no manipulation or alteration of the mitigation area, water courses, wetlands, or other jurisdictional areas without first notifying and contacting Ms. Kozlowski at 716-879-4433, or by email at Diane.C.Kozlowski@usace.army.mil, and obtaining written authorization from this office.

31. All excess dredged or excavated material not used for project purposes, shall be disposed of at a separately approved, upland disposal site. There shall be no temporary or permanent stockpiling of any material within any regulated water or wetland. Materials removed to upland disposal sites shall be stabilized and confined to preclude erosion that will compromise water quality of potential receiving streams or wetlands.

32. Site construction activities shall be carried out in a way that precludes construction debris from entering waters or wetlands. Accidental debris deposition shall be removed immediately by hand if necessary, to avoid damaging aquatic resources.

33. Fill material authorized by this permit shall be free of fines, oil and grease, debris, wood, general refuse, plaster, and other pollutants, and shall contain no broken asphalt.

34. That the Water Quality Certification issued for this project by the State of New York is part of this Department of the Army permit pursuant to Section 401(d) of the Clean Water Act. Noncompliance with any limitations or requirements stated in the certification may be a basis for suspension, revocation or modification of this permit.

35. In the event that Ms. Kozlowski is unavailable or unable to perform a required site inspection, Mr. Fred Dieffenbach will serve as your point of contact. Mr. Dieffenbach can be reached by calling 716-879-4317, at email Fred.W.Dieffenbach@usace.army.mil or by writing to USACE, Regulatory Branch, 1776 Niagara Street, Buffalo, NY 14207.

Department of the Army Permit No.: 95-987-1(1)

NOTIFICATION OF APPEAL PROCESS (NAP)
FOR A PERMIT DENIAL OR A DECLINED INDIVIDUAL PERMIT

You are hereby notified that you and/or your authorized agent(s) may appeal a permit denial or a declined individual permit under the Corps of Engineers Administrative Appeal Process. The administrative appeal process may be initiated by completing the enclosed Request For Appeal (RFA) form. The RFA should be submitted to the division engineer, Great Lakes and Ohio River Division, P.O. Box 1159, Cincinnati, OH 45201-1159, and must be received by the division engineer within 60 days of the date of this NAP. The RFA will be reviewed and processed in

accordance with the procedures set forth in 33 CFR Part 331.

REQUEST FOR APPEAL (RFA)

Name of Appellant: Benderson Development Company, Inc.

Corps File Number: 95-987-1(1)

Date Filed: _____

Reason(s) for Appeal:
(attach additional pages as needed)

_____

_____

_____

_____

_____

_____

CONDITIONS:

1. The reason(s) for requesting an appeal should be clearly stated, and your explanation must contain detailed information explaining the grounds for your appeal of the permit decision, or your appeal of the declined individual permit.

2. The appeal of a permit denial, or a declined individual permit, is limited to a review of the administrative record, the record of the appeal conference, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant or the Corps may raise new issues during the appeal process, but both parties may provide additional information as needed to clarify issues already identified in the administrative record.

3. You must grant right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

I have read and fully understand the above conditions. I am signing this document to request initiation of an administrative appeal.

_____

Appellant

Department of the Army Permit No.: 95-987-1(1)

NOTIFICATION OF APPLICANT OPTIONS (NAO)
FOR PARTIES ISSUED A DEPARTMENT OF THE ARMY INDIVIDUAL PERMIT

You are hereby advised that the following options are available to you in your evaluation of the enclosed permit:

1) You may sign the permit, and return it to the district engineer for final authorization. Your signature on the permit means that you accept the permit in its entirety, and waive all rights to appeal the permit, or its terms and conditions.

2) You may decline to sign the permit because you object to certain terms and conditions therein, and you may request that the permit be modified accordingly. You must outline your objections to the terms and conditions of the permit in a letter to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this NAO, or you will forfeit your right to request changes to the terms and conditions of the permit. Upon receipt of your letter, the district engineer will evaluate your objections, and may: (a) modify the permit to address all of your concerns, or (b) modify the permit to address some of your objections, or (c) not modify the permit, having determined that the permit should be issued as previously written. In any of these three cases, the district engineer will send you a final permit for your reconsideration, as well a notification of appeal (NAP) form and a request for appeal (RFA) form. Should you decline the final proffered permit, you can appeal the declined permit under the Corps of Engineers Administrative Appeal Process by submitting the completed RFA form to the division engineer. The RFA must be received by the division engineer within 60 days of the date of the NAP that was transmitted with the second proffered permit.